



Security Council

Sixtieth year

Provisional

5185th meeting

Tuesday, 24 May 2005, 10 a.m.
New York

<i>President:</i>	Ms. Løj	(Denmark)
<i>Members:</i>	Algeria	Mr. Baali
	Argentina	Mr. Mayoral
	Benin	Mr. Zinsou
	Brazil	Mr. Valle
	China	Mr. Guan Jian
	France	Mr. De La Sablière
	Greece	Mr. Vassilakis
	Japan	Mr. Kitaoka
	Philippines	Mr. Mercado
	Romania	Mr. Dumitru
	Russian Federation	Mr. Dolgov
	United Kingdom of Great Britain and Northern Ireland	Mr. Thomson
	United Republic of Tanzania	Mr. Manongi
	United States of America	Mr. Holliday

Agenda

The situation in Sierra Leone

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The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

The situation in Sierra Leone

The President: I should like to inform the Council that I have received a letter from the representative of Sierra Leone in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Pemagbi (Sierra Leone) took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Emmanuel Ayoola, President of the Special Court for Sierra Leone.

It is so decided.

I invite Judge Ayoola to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Judge Emanuel Ayoola, President of the Special Court for Sierra Leone, to whom I give the floor.

Judge Ayoola: It is a great honour for me to represent the Special Court for Sierra Leone today and to have the unique opportunity to brief the Council on the Court's efforts to implement its mandate in accordance with Security Council resolution 1315 (2000) of 14 August 2000 and the Agreement between

the United Nations and the Government of Sierra Leone, signed on 16 January 2002.

I would like to start by thanking the Secretary-General for supporting my initial request that a briefing on the Court be held in the Council, and all Council members for accepting the suggestion of the Secretary-General.

In the course of my presentation, I will describe the progress of the Court to date and, as requested by the General Assembly in its resolution 58/284, I will introduce the updated version of the Special Court's completion strategy, adopted on 19 May 2005 by the Management Committee of the Special Court. I will also outline the challenges ahead, referring in particular to issues of funding, security and cooperation of States.

I will briefly outline those characteristics which make the Special Court different from the other international tribunals.

First, the Special Court is the first international tribunal to use "greatest responsibility" as its standard for prosecuting alleged perpetrators. Secondly, the Court is located in the country where the alleged crimes took place. Thirdly, the Special Court was established as an independent hybrid organization. Finally, the Special Court is the first international criminal court to be funded from the outset by voluntary contributions.

The Special Court began its operations in July 2002. I am happy to report that, since then, the Court has seen significant progress in many areas, in particular in the areas of personnel, infrastructure, prosecutorial activities and judicial activities.

The founders of the Court, the Government of Sierra Leone and the United Nations, deliberately sharpened the focus of the Court by limiting its mandate to those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone in the relevant period.

Of the 13 indictments issued by the Prosecutor, 11 are currently active. In December 2003, the indictments against Foday Sankoh and Sam Bockarie were withdrawn as a result of their deaths. Of the 11 remaining accused, nine are currently in the custody of the Special Court in Freetown. Of the two remaining accused, Charles Taylor, the former President of the

Republic of Liberia, has been granted refuge in Nigeria; the leader of the Armed Forces Revolutionary Council, Johnny Paul Koroma, also remains at large. Although the Prosecutor has indicated the possibility of additional indictments, their number would be extremely limited and possibly linked to existing indictees.

In January 2004, the Trial Chamber issued decisions ordering three joint trials. As a result, three joint trials, instead of nine separate trials, are currently under way in the two chambers of the Special Court. Two trials began in June and July 2004, respectively, before the first Trial Chamber, which is alternating them on a six-week basis. In February 2004, the President of the Special Court requested a second Trial Chamber. Judges of the second Trial Chamber were appointed by the Secretary-General and the Government of Sierra Leone in January 2005, and the third trial began in March 2005.

At the time of its creation, the Special Court was envisaged as a cost-effective and time-efficient accountability model. It is to be remembered that, in paragraph 12 of a letter dated 12 January 2001 addressed to the President of the Security Council (S/2001/40), the Secretary-General indicated that three years would be the "minimum time required for the investigation, prosecution and trial of a very limited number of accused".

As the Court enters its fourth year of operations, the identification of a completion date for its operations becomes essential.

As outlined in the completion strategy which was submitted to the members of the Council, the Registry consulted with the Office of the Prosecutor and the Principal Defender in order to forecast a date for the completion of the ongoing trials.

Based on the current usage of court time, as well as actual witness hearing time, it is estimated that two of the three ongoing trials — namely those of the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC) — will be completed at the trial chamber stage around the end of 2005 or in early 2006. Taking into account an estimated time for appeals of between four and six months, the appeals could finish by mid-2006.

The completion of the Revolutionary United Front (RUF) trial at the trial chamber stage is estimated

to take place by the end of 2006, and at the appeals stage by early to mid-2007. The Registry, in consultation with the other organs, is actively working to ensure that this provisional estimate is further improved upon and that the appeals stage is completed by the end of 2006. It should be noted, however, that the appeals stage will require a smaller establishment compared to the trial stage.

In that context, I would like to underline that events before the Trial Chambers are, in our adversarial procedure, to a large extent, party-driven until decisions are made by the Trial Chambers. Apart from this, there are several factors that can influence the progress of the trial process, ranging from the number of witnesses to the illness or sudden unavailability of key individuals participating in the proceedings.

Nevertheless, the Court remains determined to complete the trials expeditiously, without sacrificing the integrity of the judicial process or the need for a fair trial to the need for expedition.

Let me turn now to some key issues, all of which have an impact on the completion strategy, namely those of funding, security and the cooperation of States in transferring to the Special Court those indictees who are still at large. Funding has been one of the main concerns of the Court since the early stages of its life. The funding issue is being raised against the background of the reluctance on the part of the United Nations at the inception of the Court to embark on another tribunal funded through assessed contributions, in addition to the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). Resolution 1315 (2000) determined that the operations of the Special Court would be financed through voluntary contributions of funds, equipment and services from States and intergovernmental and non-governmental organizations. That financial arrangement was adopted in spite of the Secretary-General's concern that voluntary contributions would not provide an assured and continuous source of funding for the operations of the Court, and that a Special Court based on voluntary contributions would be neither viable nor sustainable.

As a compromise, however, the Secretary-General asserted, in article 6 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for

Sierra Leone (S/2000/915, annex), his right to revert to the Security Council should "voluntary contributions be insufficient for the Court to implement its mandate".

To date, the Special Court has received a total of approximately \$54 million in voluntary contributions from 33 States, against a four-year budget of \$104 million. As a result of that shortfall in voluntary contributions, the Secretary-General reverted to the Security Council and sought a subvention under the United Nations programme budget for special political missions to supplement voluntary contributions. With the Security Council's endorsement, the Secretary-General requested the General Assembly to appropriate up to \$40 million for the Special Court. The General Assembly, at its fifty-ninth session, authorized a commitment authority of \$20 million for the period 31 July 2004 to 30 June 2005.

The Fifth Committee is currently considering a further commitment authority of \$13 million for the period 31 July to 31 December 2005.

I wish to emphasize that there is currently no assurance of funds for the Special Court beyond the end of 2005, even though the Registrar is pursuing additional voluntary contributions from Member States and other organizations, including the European Union. The Special Court has recently employed a consultant to develop a fund-raising strategy, which the Registrar will discuss this week with the Management Committee.

The Special Court will need funds not only to carry it through the end of the trials, but also, after rendering final judgements in the trials of all accused in custody, for the purposes of transferring any convicted persons to prisons outside of Sierra Leone and discharging a number of residual activities that will need to be carried out. These include the supervision of the enforcement of sentences, if any; the provision of support and protection to witnesses, particularly those who are relocated from Sierra Leone to other States; the maintenance of judicial records and archives; and, importantly, the retained capacity to prosecute any accused who have been indicted but who are brought into the custody of the Special Court after or shortly before the winding down process.

In addressing the issue of security, I take the opportunity to reiterate that a crucial feature which differentiates the Special Court from the International Criminal Tribunal for the Former Yugoslavia (ICTY)

and the International Criminal Tribunal for Rwanda (ICTR), is the location of the Special Court in the country in which the conflict took place. There are, no doubt, crucial advantages in locating the Court in the country where the conflict took place. However, the location in Sierra Leone has also resulted in considerable pressure on the operations of the Special Court as a result of the security situation. A very large part of the budget is devoted to security, namely 20 per cent, of which substantial resources have to be allocated to the protection of witnesses during the trial and post-trial phases.

The presence of the United Nations Mission in Sierra Leone (UNAMSIL) has been crucial in supporting the Special Court's mandate. I would like to commend UNAMSIL for the efficient security provided to the site of the Special Court. In particular, a company of Nigerian soldiers has been providing security since the early stages of the Special Court. That arrangement has been of the greatest assistance.

The Department of Peacekeeping Operations (DPKO) briefed the Council last week on UNAMSIL's withdrawal plan, and the Secretary-General has highlighted, in his latest report on UNAMSIL (S/2005/273), the fact that serious challenges continue to be faced in building durable peace in Sierra Leone, also in the light of the regional security situation. The report also notes that new security arrangements for the Special Court will need to be in place by early November 2005.

The Registrar has informed both DPKO in New York and UNAMSIL on the ground of our preferred options and our financial constraints, as no budgetary provision has been made for security post-UNAMSIL. It is felt that the only viable option for the Special Court is to retain an international force on site, preferably a military force or a formed police unit from the United Nations Mission in Liberia (UNMIL). To this end, DPKO has initiated consultations with UNAMSIL, UNMIL and the Special Court to provide recommendations to the Security Council by July 2005 and to ensure that arrangements are in place in due time. We hope that the Security Council will support the continued provision of security to the Special Court, as the Court was created as a part of the overall effort of the international community to bring lasting peace and stability to Sierra Leone.

Another crucial issue at this stage in the life of the Court concerns the transfer to the Court of those indictees who are still at large. In my capacity as President of the Special Court, I raise this issue without forming any opinion on the individual criminal responsibility of any person indicted before the Special Court, but to highlight the practical implications of outstanding cases.

As I have earlier mentioned in the course of this presentation, there are currently two indictees who are not yet in the custody of the Special Court in Freetown. The whereabouts of Johnny Paul Koroma, who is indicted with 17 counts, are not known. However, the indictment remains valid until evidence of his death may be available to the Prosecutor. The other indictee, Charles Taylor, who resigned as President of the Republic of Liberia in August 2003, has since that date been granted refuge in Nigeria. On 3 March 2003, the Prosecutor issued a 17-count indictment against him for crimes against humanity, violations of article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law. His indictment was disclosed by the Special Court on 12 June 2003. The Special Court has continued its efforts, so far unsuccessfully, to have Taylor transferred to Sierra Leone for the conduct of the trial against him, and all necessary logistical and financial arrangements are in place.

A delay in the transfer and trial of Charles Taylor will have a negative impact in terms of completion strategy, funding and security requirements. Also, the importance of trying Taylor and Johnny Paul Koroma before the Special Court cannot be overemphasized because of the strong impact that this would have on the perception that the people of Sierra Leone and of Africa have of the Special Court and of similar institutions, and on the Court's contribution to combating the culture of impunity.

The Special Court has, since its inception, endeavoured to play an active role in contributing to the consolidation of peace in Sierra Leone and to the development of the rule of law. Since the very beginning of its operations, the Court has been aware of the need for a strong outreach programme in order to take full advantage of the unprecedented opportunity presented by its location. The Outreach Section, which is entirely composed of Sierra Leonean staff, has undertaken a wide range of initiatives. In a particularly innovative programme, the Special Court's Public

Affairs Office has been producing video summaries of trial proceedings for the outreach efforts in the provinces, which are screened by the court's outreach programme across Sierra Leone on mobile video units. I am proud to say that the outreach efforts of the Special Court have been regarded as a model by the Tribunals for Rwanda and for the Former Yugoslavia, and by the International Criminal Court.

The location of the Special Court in Sierra Leone and its hybrid nature have given prominent relevance to the concept of legacy. The notion of the legacy of the Special Court is embedded within the Court itself and within the civil society community surrounding it.

Foremost, the Special Court will leave behind a sense of justice for crimes committed during the decade-long conflict in Sierra Leone and will engender public awareness that criminal accountability for such crimes is possible.

The Special Court will also leave a legacy for the Sierra Leonean personnel who represent approximately 60 per cent of the 340 staff members. In many ways, the Special Court will enable its Sierra Leonean personnel in all areas of operations, and their local counterparts, to develop their professional expertise despite the Special Court's lack of an explicit capacity-building mandate.

It is expected that when the Special Court winds down, it will also leave behind tangible and material resources for the Sierra Leonean legal system, including a state-of-the-art courthouse, a modern detention facility in full compliance with international standards on prison accommodation and the highly specialized collection of the Court's library.

Globally, our vision and our mission is to leave a legacy that will serve as a model for ensuring accountability for violations of international humanitarian law in other post-conflict situations, in an expeditious and financially restrained fashion, without compromising the observance of fair hearing in the judicial process.

In conclusion, I would like to thank the Security Council and, in particular, those Member States who have funded and supported the Special Court thus far. I would also like to express my gratitude to the Secretary-General for his unwavering support at a time when the United Nations has to face many varied challenges worldwide.

The international community cannot afford to let the Court fail, as such failure would send a negative message to those struggling to combat the culture of impunity and would undermine respect for human rights and international law, thus emboldening any who may plan to embark on a course of conduct that is in deliberate violation of international humanitarian law.

With those key issues that I have outlined today in mind, I urge the Security Council to continue to give its wholehearted and effective support to the Special Court in any manner it may consider appropriate, in particular in the areas of adequate funding, the transfer of those indictees who remain at large and maintenance of the necessary security until the end of the operations of the Court.

As the outgoing President of the Special Court, I would like to end on a more personal note. I am honoured, as are all my colleagues — judges of the Court and the entire staff of the Court — to be a part of the Special Court and of the determination of the international community to end impunity. I would also like to express my gratitude to the Secretariat's Office

of Legal Affairs. I acknowledge with gratitude the tremendous, healthy and constructive interest shown by several non-governmental organizations in the work of the Court.

Finally, I would like to express my gratitude to the Special Court's managers who are here today, and to commend them and all the staff of the Court for helping to achieve justice for the victims of the Sierra Leonean conflict — sometimes under harsh circumstances — with an innovative and true commitment.

The President: I thank Judge Ayoola for his briefing.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

In accordance with the understanding reached in the Council's prior consultations, I invite Council members to a private meeting following the adjournment of this meeting.

The meeting rose at 10.50 a.m.